

Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 12/18/2006	Department ID Number: ED 06-48

**CITY OF HUNTINGTON BEACH  
REQUEST FOR COUNCIL/REDEVELOPMENT AGENCY ACTION**

**SUBMITTED TO:** Honorable Mayor/Chair and City Council/Redevelopment Agency Members

**SUBMITTED BY:** *Penelope Culbreth-Graft*  
Penelope Culbreth-Graft, DPA, City Administrator/Executive Director

**PREPARED BY:** Deputy Executive Director/  
Stanley Smalewitz, Director of Economic Development *SS*  
Robert F. Beardsley, PE, Director of Public Works *R F Beardsley*

**SUBJECT:** ADOPT CITY RESOLUTION No. 2006 - 82 AND AGENCY  
RESOLUTION No. 366 RELATING TO THE BELLA TERRA MALL

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** Bella Terra Associates, LLC, the developer of the Bella Terra (located at the northwest corner of Beach Boulevard and Edinger Avenue), contends it has completed all required public improvements for Tentative Parcel Map 2003-163 and has requested that the Redevelopment Agency determine that the construction, rehabilitation and renovation of Bella Terra is complete.

The City is being asked to adopt Resolution No. 2006- 82 (Attachment 2) approving a Special Utility Easement and Maintenance Agreement and directing the City Engineer to accept the public improvements upon the recordation of Parcel Map 2003-163.

The Redevelopment Agency is being asked to adopt Resolution No. 366 (Attachment 3) deeming Bella Terra a first-quality regional mall and the construction, rehabilitation and renovation complete and authorizing the Executive Director to provide a Release of Construction Covenants upon the recordation of Parcel Map No. 2003-163. (Attachment 4 - Request and Release of Construction Covenants (unsigned)).

**Funding Source:** Not Applicable.

*E-16*

## REQUEST FOR COUNCIL/REDEVELOPMENT AGENCY ACTION

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### **Recommended City Action:**      **Motion to:**

1. Adopt City Resolution No. 2006- 82 finding that:
  - A. The Special Utility Easement and Maintenance Agreement between the City of Huntington Beach and Bella Terra Associates, LLC is approved;
  - B. The Mayor and City Clerk are authorized to execute the Special Utility Easement and Maintenance Agreement and the City Clerk is instructed to record the Agreement with the Orange County Recorder;
  - C. The City Engineer is directed to accept the public improvements upon the recordation of Parcel Map 2003-163 and the City Clerk is instructed to record a Certificate of Acceptance with the Orange County Recorder only upon the recordation of Parcel Map 2003-163; and
  - D. The City Administrator is authorized to sign all documents necessary and appropriate to carry out and implement the Special Utility Easement and Maintenance Agreement (Attachment 1) between the City of Huntington Beach and Bella Terra Associates, LLC.

### **Recommended Agency Action:** **Motion to:**

1. Adopt Agency Resolution No. 366 finding that:
  - A. Bella Terra is a first-quality regional shopping center as required by the OPA and plans approved by the City and Agency.
  - B. Upon the recordation of Parcel Map 2003-163, the construction, rehabilitation and renovation required by the Scope of Development and Sections 401 and 501 (a) and (b) of the OPA is complete; and
  - C. Upon the recordation of Parcel Map 2003-163, the Executive Director is authorized to provide the "Release of Construction Covenants" to Participant and the City Clerk is instructed to record the "Release of Construction Covenants" with the Orange County Recorder.

### **Alternative Action(s):**

1. Do not approve the recommended motions and refer back to staff for changes.
2. Deny the recommended action. This action may violate the Subdivision Map Act.

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### Analysis:

#### City Actions

On March 19, 2005, the Director of Planning conditionally approved Tentative Parcel Map No. 2003-163 (Bella Terra). The conditions of approval required the developer to dedicate easements to the City for the new and existing public water pipelines and appurtenances, located within Bella Terra and enter into a Special Utility Easement and Maintenance Agreement with the City for maintenance and control of the area within the public water system easement.

Once recorded with the Orange County Recorder's office, a reference to the Special Utility Easement and Maintenance Agreement will be noted on Parcel Map 03-163, which map will then be recorded with the Orange County Recorder's office. City Resolution No. 2006-82 makes certain findings relating to the City's acceptance of the improvements, including that upon recordation of Parcel Map 2003-163, the Conditions of Approval for Tract Map 2003-163 will be deemed complete.

The developer, Bella Terra Associates LLC ("BTA") has completed the public improvements required by Parcel Map 2003-163 and is requesting acceptance of this work. The City Engineer has determined that the improvements have been constructed in substantial compliance with the approved plans and specifications, and recommends acceptance of the improvements. Upon the recordation of the Special Utility Easement and Maintenance Agreement with the Orange County Recorder, the public improvements consisting of the domestic water system and appurtenances within the private development and Edinger Avenue, the storm drain system and appurtenances, curb, gutter, paving, sidewalk, landscaped medians within Edinger Avenue and parking garage, may be accepted by the City Engineer.

#### Redevelopment Agency Action

The Redevelopment Agency entered into that certain Owner Participation Agreement with BTA's predecessor-in-interest, Huntington Center Associates, LLC, dated October 2, 2000, as supplemented by that certain First Implementation Agreement dated August 4, 2005 (collectively, the "OPA"). The OPA establishes terms and conditions for the BTA's redevelopment of the property formally referred to as Huntington Center mall. The OPA required development of a first-quality regional shopping center pursuant to plans approved by the City and Agency. BTA contends that, upon recordation of Parcel Map 03-163, the construction of all improvements is complete.

Agency Resolution No. 366 makes certain findings relating to the OPA including: (1) Bella Terra is a first-quality regional shopping center as required by the OPA; (2) Upon the recordation of Parcel Map 2003-163, the construction, renovation and rehabilitation required by the OPA is complete; and (3) Following the recordation of Parcel Map 2003-163, the

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Executive Director is authorized to provide a "Release of Construction Covenants" and the City Clerk is instructed to record the same with the Orange County Recorder.

1. As stated in Attachment 4 of the OPA the developer is required to develop a first-quality regional shopping center pursuant to plans approved by the City and meeting the design and architectural standards of certain Specific Plan initially adopted by Resolution No. 2000-68 on July 5, 2000. It is staff's opinion that the developer has met the requirement and staff is recommending that the Agency make the finding that the site has been developed into a first-quality regional shopping center.
2. The terms of the OPA provide that, after completion of the construction of all improvements, as reasonably determined by the Agency, the Agency shall furnish BTA with a Release of Construction Covenants upon written request. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction, rehabilitation and renovation as required by the Scope of Development and Sections 401 and 501(a) and (b) of the OPA. The Agency received the written request dated December 11, 2006 (Attachment 4). It is staff's opinion that BTA has satisfactorily met these requirements and staff is recommending that the Agency deem the date upon which Parcel Map 03-153 as the date of Completion of Construction for the purposes of the OPA and authorize the Executive Director to execute a Release Construction Covenants.

**Environmental Status:** Not applicable

### Attachment(s):

City Clerk's Page Number	No.	Description
5	1.	Special Utility Easement and Maintenance Agreement
25	2.	City Resolution No. 2006- <u>82</u>
29	3.	Agency Resolution No. <u>366</u>
32	4.	Request and Release of Construction Covenants

**E16.5**

# **ATTACHMENT #1**

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RECORDING REQUESTED BY )  
AND WHEN RECORDED RETURN TO: )  
 )  
City Clerk )  
City of Huntington Beach )  
2000 Main Street )  
Huntington Beach, CA 92648 )

**DRAFT**

[Space above this line for Recorder's use.]

This document is exempt from  
recording fees pursuant to  
Government Code Sections 6103 and 27383

**SPECIAL UTILITY EASEMENT AND MAINTENANCE AGREEMENT**

**(Bella Terra Shopping Center, Huntington Beach, CA)**

**THIS SPECIAL UTILITY EASEMENT AND MAINTENANCE AGREEMENT** ("Agreement") is entered into as of this 12th day of December, 2006 by, between, and among **BELLA TERRA ASSOCIATES, LLC**, a Delaware limited liability company ("BTA") and the **CITY OF HUNTINGTON BEACH**, a municipal corporation of the State of California, ("City"), with reference to the following:

Recitals

A. BTA is the owner of certain real property located in the City of Huntington Beach, California ("BTA Property") commonly known as the Bella Terra Shopping Center ("Shopping Center"), as the BTA Property is more particularly described on that certain Exhibit "A" legal description attached hereto and made a part hereof.

B. BTA leases certain portions of real property ("SCE Land") owned by Southern California Edison, a California corporation ("SCE") for use in connection with BTA's development, use, and operation of the Shopping Center, as such leasehold interest of BTA and SCE Land are provided and described in that certain Option Agreement between SCE and BTA's predecessor-in-interest, dated as of December 1, 2002, as amended (collectively, the "SCE Lease").

C. Pursuant to Article VI of the SCE Lease, BTA and/or its predecessor-in-interest installed (or caused to be constructed or installed) improvements consisting of a water pipeline(s) with incidental ordinary and necessary appurtenances and connection(s), for the transmission and delivery of water, including but not limited to, air valves, blow-offs, fire hydrants, and service connection structures appurtenant to said pipelines, in, on and under a portion of the SCE Land. A Notice of Completion was filed by BTA and/or its predecessor-in-interest pursuant to Section 6.2(l) of Article VI of the SCE Lease.

D. BTA has applied to the City for approval of that certain final Parcel Map No. 03-163 (Bella Terra) (the "Map") which, when approved by the City and filed with the Orange County Recorder, will subdivide the BTA Property. The City has imposed certain conditions of approval on the Map, which conditions, among other things, require BTA to dedicate a water utility easement covering the public water facilities and appurtenances located within the Map boundary area and the SCE Land. The purpose of this Agreement is to provide complete satisfaction of the conditions of approval relating to the water utility easement.

E. BTA desires and intends for BTA to grant to City certain perpetual, non-exclusive special utility easements and rights of way for certain water pipelines and appurtenances on portions of the SCE Land, as such portions of the SCE Land are described and shown on that certain Exhibit "C" attached hereto and made a part hereof, subject to the terms of the SCE Lease, all on the terms and conditions set forth below.

F. BTA and City also desire and intend to enter into certain agreements regarding BTA's grant to City of certain rights relating to certain existing water pipelines and appurtenances in the SCE Land subject to the SCE Lease which service the Shopping Center, all on the terms and conditions set forth below.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:



1. **Special Utility Easements.** BTA hereby grants and conveys to City a perpetual non-exclusive special utility easements and rights of way to install, maintain, repair, improve and relocate a pipeline or pipelines (the "City Waterline"), with incidental ordinary and necessary appurtenances and connection(s), in, on and under those portions of the BTA Property as more particularly described on Exhibit "B" (each, an "Easement Area" and collectively, the "Easement Areas") and to construct in, on and under such Easement Area, water pipelines for the transmission and delivery of water, including but not limited to, air valves, blow-offs, fire hydrants, and service connection structures appurtenant to said line or lines, which structures may, to the extent required, extend above the surface of the ground; together with the right to enter and traverse upon adjacent and other lands of BTA as necessary to obtain access to and along the Easement Areas and to deposit tools, implements and material thereon by City, its officers, agents and employees or by persons under contract to City, whenever and wherever necessary for the purpose of laying, constructing, reconstructing, renewing, inspecting, maintaining, operating, testing, repairing, enlarging, replacing and using said water transmission and delivery line or lines and appurtenances, subject to the other provisions of this Paragraph 1.

BTA retains all rights to use the surface areas and the non-exclusive right to use the subsurface areas of the Easement Areas in such manner as BTA shall deem necessary or desirable consistent with this Agreement provided, however, that BTA obtains the City's prior approval and/or an encroachment permit from the City for BTA's use of Easement Areas that interferes with City's exercise of its rights under this Agreement. BTA may request City to modify or relocate City's Waterline, or any equipment or appurtenance incidental thereto, at BTA's expense. In the performance of any of the work which City is authorized hereunder to perform in the Easement Areas, City shall avoid, to the extent reasonably possible, any damage or interference with other installations or improvements in the Easement Areas. BTA shall not alter the grade or overhead conditions without notifying the City at least twenty (20) business days prior to any such alteration, and obtaining prior written approval and/or an encroachment permit from the City. There shall also be no less than 20 feet of clear vertical space immediately above the surface areas of the easement measured from the finished ground level, nor shall any

trees be located within, or overhang the easement ground area. The City agrees to confer with BTA thereof in order that City activity will result in a minimum of inconvenience and hardship.

City accepts the easements and rights of way granted under this Paragraph 1 with the knowledge that the current use of the Easement Areas is for the Shopping Center, including without limitation parking areas, vehicular and pedestrian access ways, walkways, driveways, circulation drives, ramps, and landscaped and open space areas, as well as the uses granted City under this Agreement. In exercising its rights under this Agreement, City shall:

(i) Make adequate provision for the safety and convenience of all persons using the Easement Areas or other improvements or facilities of City in the Easement Areas;

(ii) Repair and restore, at City's sole cost and expense, the condition of the BTA Property and the Shopping Center after any work conducted or caused to be conducted by City pursuant to this Paragraph 1 to the condition that existed prior to such work by the City; provided, however, that City will not be required to use above-standard hardscape materials and finishes such as payment treatments other than asphalt and concrete in the City's maintenance, repair, replacement and restoration of the BTA Property and the Shopping Center.

(iii) Hold BTA and other users of the Easement Area harmless against all claims, liabilities or expenses, including costs and attorneys' fees, arising from City's use of the Easement Areas under this Agreement.-

In its exercise of its rights under this Agreement, City shall not permit any claim, lien or other encumbrance arising from such exercise to accrue against or attach to such rights or to the Easements Areas (or any one or more of them) or the interest of BTA in the BTA Property and the Shopping Center including, without limitation, any land in, on and under which said easement is granted.

Notwithstanding anything to the contrary contained herein, City further covenants and agrees that it shall exercise best efforts to refrain from performing non-emergency repairs of, or other work to, the Easement Areas from November 15th of any calendar year through and including January 10th of the succeeding calendar year, to avoid

interference or disruption of the retail business of the Shopping Center during the holiday season.

2. **Agreements Regarding Waterline on SCE Land.**

(a) **Access and Maintenance:** BTA, and/or their predecessor(s)-in-interest has constructed and installed (or caused to be constructed and installed) a pipeline or pipelines, with incidental ordinary and necessary appurtenances and connection(s), for the transmission and delivery of water, including but not limited to, air valves, blow-offs, fire hydrants, and service connection structures appurtenant to said pipelines (the "SCE Waterline"), in, on and under a portion of the SCE Land connecting the Shopping Center (north of the Map boundary area) to the existing public water pipeline improvements in Center Drive (the "SCE Area") as the SCE Area is shown and described in the attached Exhibit "C". Subject to the SCE Lease and for the term thereof, including any extensions or renewals thereof, BTA hereby agrees that City, the Fire Department for the City of Huntington Beach ("HBFD"), and the City's agents, employees and contractors (collectively, the "City Parties"), shall be entitled to a non-exclusive right of access to and use of the SCE Area for the purpose of laying, constructing, reconstructing, renewing, inspecting, maintaining, operating, testing, repairing, enlarging, replacing, and using the SCE Waterline for water transmission and delivery line or lines, including any and all fire hydrants located on the surface of same and any other above-ground appurtenances; *provided further, however*, that such agreement of BTA and the City is expressly subject to, and conditioned upon, the SCE Lease and all terms and conditions thereof, the rights of BTA under the SCE Lease, and the duration of the term of the SCE Lease and BTA's rights thereunder, as the same may be extended or renewed. City agrees, for itself and the City Parties, to comply with all requirements of the SCE Lease as may relate to the conduct of any activities of City or the City Parties on or affecting the SCE Waterline under this Agreement. BTA and City agree that this Agreement is not intended and shall not be construed as an assignment, transfer, conveyance, encumbrance or sublease of any interest of BTA under the SCE Lease.

All rights granted to the City Parties hereunder are granted on a non-exclusive basis and are subject to the access, use, repair, replacement, improvement and other

activities of BTA and its agents, employees, contractors, tenants, occupants, licensees, business invitees and other users of the SCE Land . The rights of the City Parties hereunder shall include a right of reasonable access over other portions of the SCE Land, the BTA Property, and the Shopping Center for ingress, egress, and other access to, and use of, the SCE Area by pedestrians and vehicles, including the rights of the HBFD to access and use the same for the purposes of accessing, using, testing and servicing any and all fire hydrants located above the surface in the SCE Area.

BTA retains the non-exclusive right for itself, its tenants, and their respective agents, employees, contractors, tenants, occupants, licensees, business invitees and other users, to use the surface area and subsurface areas of the SCE Area in such manner as each of them shall deem necessary or desirable from time to time, provided however, that BTA obtains the City's prior approval and/or an encroachment permit from the City for BTA's use of the SCE Area that interferes with the City's exercise of its rights under this Agreement and BTA's use of the subsurface area does not interfere with the rights of the City Parties under this Agreement. The City Parties shall, to the extent practical and reasonable, conduct their exercise of their rights under this Agreement, without interfering with, or disrupting, the use and operation of the BTA Property.

City covenants and agrees, for itself and the City Parties, that it shall deliver to BTA not less than ten (10) business days prior written notice of City's intention to perform any construction, repair, replacement, restoration, improvement, or other work to the SCE Waterline or the SCE Area; *provided, however*, only such prior notice as shall be reasonable or feasible under the circumstances shall be necessary in the event of emergency. Notwithstanding anything to the contrary contained herein, City further covenants and agrees that it shall exercise best efforts to refrain from performing any and all non-emergency repairs of, or other work to, the SCE Waterline and/or the SCE Area from November 15th of any calendar year through and including January 10th of the succeeding calendar year, to avoid interference or disruption of the retail business of the Shopping Center during the holiday season.

City shall not construct or install any additional improvements within the SCE Areas without the prior written notice to BTA. City agrees to confer and cooperate reasonably with BTA so that any activities of City hereunder to be conducted on or in the

vicinity of the SCE Area will not interfere with or disrupt, any use, operation or activity by BTA and its employees, agents, contractors, tenants, occupants, business invitees, visitors, and other users or create any material inconvenience or hardship for any of the foregoing.

City accepts the rights granted under this Paragraph 2 with the knowledge that the current use of the SCE Area is for the Shopping Center, including without limitation parking areas, vehicular and pedestrian access ways, walkways, driveways, circulation drives, ramps, and landscaped and open space areas, as well as the uses granted City under this Agreement. In making any use of its rights hereunder, City shall:

- (i) Make adequate provision for the safety and convenience of all persons using the SCE Area or other improvements or facilities of City in the SCE Area;
- (ii) Bear any and all cost and expense of maintenance, repair, and/or replacement of City's waterline improvements in the SCE Area, including without limitation any additional improvements required or desired by City;
- (iii) Repair and restore, at City's sole cost and expense, the condition of the BTA Property and the Shopping Center after any work conducted or caused to be conducted by City pursuant to this Paragraph 1 to the condition that existed prior to such work by the City; provided, however, that City will not be required to use above-standard hardscape materials and finishes such as payment treatments other than asphalt and concrete in the City's maintenance, repair, replacement and restoration of the BTA Property and the Shopping Center.
- (iv) Hold BTA and other users of the SCE Area harmless against all claims, liabilities or expenses, including costs and attorneys' fees, arising from the City's exercise of their rights under this Agreement, including without limitation, use of the SCE Area.

In its exercise of its rights under this Agreement, City shall not permit any claim, lien or other encumbrance arising from such exercise to accrue against or attach to such rights or to the SCE Area or any other portion of the BTA Property or any right, title or interest of BTA or its tenants, occupants, business invitees, visitors, or other users therein.

(b) Removal or Relocation: If SCE requires the removal or relocation of the SCE Waterline and, despite BTA's good faith efforts to oppose such removal, such removal or relocation is reasonably imminent, BTA agrees for itself and its successors-in-interest that BTA (or such successor(s)-in-interest, if BTA shall no longer be owner of the BTA Property) shall replace or relocate the Waterline with a comparable public or private waterline on another area mutually agreeable to the parties. BTA (or such successor(s)-in-interest, as applicable) shall bear all cost and expense of design, construction and installation of the comparable public or private waterline to the reasonable satisfaction of the City and hereby agrees to indemnify the City from and against all such cost and expense, as well as any claims of SCE for inverse condemnation in connection with the SCE Waterline resulting from this Agreement.

3. General Provisions:

(a) Parties; No Third Party Beneficiaries: The parties to this Agreement shall be City and BTA. Upon BTA's (or any successor-in-interest) sale of the BTA Property, BTA (or such successor) shall be released from all further obligations under this Agreement arising and accruing from and after the effective date of such sale or transfer. No third party shall have any rights or privileges in, to, or under this Agreement by virtue of the parties' entry into, or performance of their respective obligations under, this Agreement.

(b) Appurtenance: The easements, rights, covenants, agreements, duties and obligations of the parties under this Agreement granted and created herein shall run with the land and shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, personal representatives, successors, transferees, and assigns.

(c) Self Help: If BTA or any successor-in-interest defaults in the performance of any obligation under this Agreement ("Defaulting Party"), such that an imminent threat to public health, safety or welfare shall result, in addition to all other remedies the City may have at law or in equity, after ten (10) days' prior written notice to the Defaulting Party (or, in the case of extreme emergency, such prior notice as shall be practicable and feasible under the circumstances) specifying the nature of the default and the actions required to be taken to cure the default (or in the case of an emergency after

such notice as is practical under the circumstances), the City shall have the right to perform such obligation on behalf of Defaulting Party. In that event, the Defaulting Party shall, within thirty (30) days of request by the City, reimburse the City for the cost thereof, together with interest thereon from the date of outlay at a rate equal to the lesser of (a) three percent in excess of the prime lending rate published by *The Wall Street Journal*, or (b) the highest rate permitted by applicable law (the "Interest Rate").

(d) Counterparts: This Agreement may be executed in counterpart, each counterpart shall be regarded as an original for all purposes, and such counterparts, when taken together, shall constitute one and the same original.

IN WITNESS WHEREOF, this Special Utility Easement and Maintenance Agreement has been executed by the parties as of the day and date first set forth above.

"CITY"

**CITY OF HUNTINGTON BEACH**, a  
municipal corporation of the State of  
California

REVIEWED AND APPROVED:

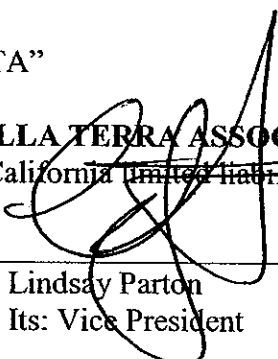
\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Mayor

"BTA"

**BELLA TERRA ASSOCIATES, LLC**,  
A California limited liability company

By

  
\_\_\_\_\_  
Lindsay Parton  
Its: Vice President

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

INITIATED AND APPROVED:

\_\_\_\_\_  
Director of Public Works

STATE OF CALIFORNIA     )  
                                          )  
COUNTY OF                    )

On December 12, 2006, before me, Rebecca Bogard  
Notary Public, personally appeared Lindsay Parton, personally known  
to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/~~she/they~~ executed the same in his/her/their authorized capacity(ies), and that by  
his/~~her/their~~ signature on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



(Seal)

Rebecca Bogard  
Notary Public

STATE OF CALIFORNIA     )  
                                          )  
COUNTY OF                    )

On \_\_\_\_\_, 2006, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known  
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)



STATE OF CALIFORNIA       )  
                                          )  
COUNTY OF                    )

On \_\_\_\_\_, 2006, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known  
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

**PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE**

**(Government Code Section 27281)**

This is to certify that the interest in real property conveyed by the Special Utility Easement And Maintenance Agreement dated December 12, 2006 by and between **BELLA TERRA ASSOCIATES, LLC**, a Delaware limited liability company and the **CITY OF HUNTINGTON BEACH**, a municipal corporation of the State of California, is hereby accepted by the undersigned officer on behalf of the City Council of the **CITY OF HUNTINGTON BEACH** pursuant to authority conferred by Resolution no. 3537 of the City Council of the City of Huntington Beach adopted on August 7, 1972, and the grantee consents to recordation thereof by its duly authorized officer.

**DATED: \_\_\_\_\_ CITY OF HUNTINGTON BEACH**

By: \_\_\_\_\_

Its: Mayor

## **EXHIBIT "A"**

### **Legal Description of BTA Property**

(See attachment.)

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EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DESCRIBED AS FOLLOWS:

PARCELS 2 THROUGH 9, INCLUSIVE, OF PARCEL MAP NO. 86-200, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 255 PAGES 40 THROUGH 45, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THOSE PORTIONS OF SAID PARCELS 4 AND 8 CONVEYED TO THE CITY OF HUNTINGTON BEACH, A MUNICIPAL CORPORATION, BY DEED RECORDED MAY 1, 1991 AS INSTRUMENT NO. 91-209426 OF OFFICIAL RECORDS.

ALSO EXCEPT THOSE PORTIONS OF PARCELS 2 AND 6 CONVEYED TO THE CITY OF HUNTINGTON BEACH, A CALIFORNIA CHARTER CITY, BY DEED RECORDED MAY 31, 2005 AS INSTRUMENT NO. 05-414924, OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED FROM THE SURFACE OF SAID LAND.

ALSO EXCEPT FROM PARCELS 4, 5, 6, 7, 8 AND A PORTION OF PARCEL 2 AN UNDIVIDED 55% INTEREST IN ALL THE LAND LYING MORE THAN FIVE HUNDRED (500) FEET BELOW THE SURFACE, BUT NONE OF THE LAND LYING ABOVE A DEPTH OF FIVE HUNDRED (500) FEET BELOW THE SURFACE OF THE LANDS WITH NO RIGHT OF SURFACE ACCESS OR USE OF THE LANDS LYING MORE THAN FIVE HUNDRED (500) FEET BELOW THE SURFACE, HEREINAFTER REFERRED TO AS "SAID LAND", FOR THE PURPOSES OF EXPLORING AND PROSPECTING FOR (BY GEOLOGICAL, GEOPHYSICAL, AND ALL OTHER MEANS WHETHER NOW KNOWN OR NOT), DRILLING FOR, PRODUCING, SAVINGS, TAKING AND OWNING OIL, GAS, ASPHALTUM, AND ALL OTHER MINERALS, WHETHER SIMILAR OR DISSIMILAR TO THOSE HEREIN SPECIFIED AND INCLUDING FISSIONABLE MATERIALS COLLECTIVELY HEREINAFTER REFERRED TO AS "SAID SUBSTANCES," IN, UNDER OR THAT MAY BE PRODUCED FROM SAID LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS USEFUL OR CONVENIENT FOR OPERATIONS IN SAID LAND, IN ADJACENT OR CONTIGUOUS LANDS, AND IN OTHER LANDS IN THE SAME VICINITY, INCLUDING, BUT NOT LIMITED TO, (1) SUBSURFACE RIGHTS OF WAY FOR DRILLING, REPAIRING, RE-DRILLING, DEEPENING, MAINTAINING, OPERATING, ABANDONING, REWORKING AND REMOVING WELLS TO, IN, INTO AND THROUGH SAID LAND; (2) THE RIGHT TO CONDUCT OPERATIONS BY METHODS NOW KNOWN OR UNKNOWN WHICH ARE REASONABLY DESIGNED TO BENEFIT OR FACILITATE THE DRILLING FOR, OR PRODUCTION OF,

SAID SUBSTANCES FROM SAID LAND; (3) THE UNRESTRICTED AND EXCLUSIVE RIGHT, POWER AND AUTHORITY TO PRODUCE SAID SUBSTANCES BENEATH OR RECOVERABLE FROM SAID LAND, AND TO EXERCISE ALL OTHER RIGHTS AND PRIVILEGES HEREIN SET FORTH BY MEANS OF ANY WELL OR WELLS WHICH ARE SLANT DRILLED FROM SURFACE DRILL SITES LOCATED ON SUCH OTHER LANDS AND THE PRODUCING INTERVALS OF WHICH ARE BOTTOMED IN SAID LAND; AND (4) THE RIGHT TO DRILL A WELL OR WELLS OR USE ANY EXISTING WELLS, TO, IN, INTO OR THROUGH SAID PORTION OF SAID LAND, FOR THE PURPOSE OF INJECTING INTO SAID PORTION OF SAID LAND, OR INTO OTHER LANDS, OIL, GAS, AIR, WATER OR OTHER LIQUID OR GASEOUS SUBSTANCES, INCLUDING THE RIGHT, FROM TIME TO TIME TO IGNITE OR OTHERWISE ACTIVATE ANY OR ALL OF SUCH SUBSTANCES SO INJECTED OR ANY OR ALL OF SAID MINERALS AND MATERIALS DESCRIBED HEREIN WITHIN SAID PORTION OF SAID LAND OR OTHER LANDS, RESERVED IN DEED RECORDED APRIL 4, 1986 AS INSTRUMENT NO. 86-136183 OF OFFICIAL RECORDS AND RE-RECORDED AUGUST 13, 1986 AS INSTRUMENT NO. 86-360236 OF OFFICIAL RECORDS.

**EXHIBIT "B"**

**Legal Description of BTA Property Easement Area**

(See attachment.)

**Item E-16**  
**Attachment #1 Exhibit “B”**  
**Legal Description of BTA Property Easement**  
**Area**  
**to be distributed**  
**as a late communication**



## **EXHIBIT "C"**

### **Legal Description of SCE Waterline Areas**

**(See attachment.)**

**Item E-16**  
**Attachment #1 Exhibit “C”**  
**Legal Description of SCE Waterline Areas**  
**to be distributed**  
**as a late communication**

E16 . 25

**ATTACHMENT #2**

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RESOLUTION NO. 2006-82

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF HUNTINGTON BEACH RELATING TO TENTATIVE  
PARCEL MAP NO. 2003 -163 (BELLA TERRA)

WHEREAS, pursuant to Tentative Parcel Map No. 2003-163 and Conditions of Approval thereto, the developer of the Bella Terra Mall is required to provide certain improvements and dedications; and

On March 19, 2004, the Director of Planning conditionally approved Tentative Parcel Map No. 2003-163 (Bella Terra) that included a requirement that the developer was required to provide easements to the City for the new and existing public water pipelines and appurtenances, located within the Bella Terra property and enter into a Special Utility Easement and Maintenance Agreement ("Agreement") with the City for maintenance and control of the area within the public water system easement. A copy of the Agreement is attached hereto as Exhibit "A" and is incorporated herein by this reference;

The Director of Public Works and the Director of Planning have reviewed the Agreement between the City and the developer, Bella Terra and Associates, LLC ("BTA") and agree that the Conditions of Approval for Parcel Map 2003-163 will be completed upon the recordation of the Agreement and Parcel Map 2003-163;

Following the recordation of Agreement and Parcel Map 2003-163, the public improvements constructed and consisting of the domestic water system and appurtenances within the private development and Edinger Avenue, the storm drain system and appurtenances, curb, gutter, paving, sidewalk and landscaped medians within Edinger Avenue and parking garage, may be accepted by the City Engineer.

NOW, THEREFORE, the City finds and determines as follows:

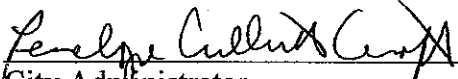
1. The Special Utility Easement and Maintenance Agreement between BTA and the City is hereby approved.
2. The Mayor and City Clerk are authorized to execute the Special Utility Easement and Maintenance Agreement and the City Clerk is instructed to record the agreement with the Orange County Recorder.
3. The City Engineer is directed to accept the public improvements and the City Clerk is instructed to record a Certificate of Acceptance with the Orange County Recorder only upon the recordation of the Special Utility Easement and Maintenance Agreement and Parcel Map 2003-163.

4. The City Administrator is authorized to sign all documents necessary and appropriate to carry out and implement the Special Utility Easement and Maintenance Agreement.

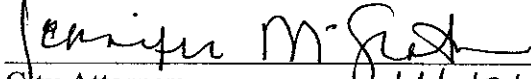
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

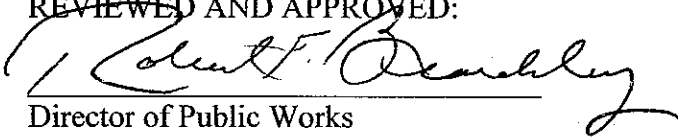
REVIEWED AND APPROVED:

  
City Administrator

APPROVED AS TO FORM:

  
City Attorney  
9/21/06 UM 12/11/06

REVIEWED AND APPROVED:

  
Director of Public Works

**Item E-16**  
**Attachment #2 Exhibit “A”**  
**Special Utility Easement and Maintenance**  
**Agreement**  
**to be distributed**  
**as a late communication**

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E16 . 29

# ATTACHMENT #3

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RESOLUTION NO. 366

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF  
HUNTINGTON BEACH DETERMINING THAT THE BELLA TERRA MALL  
IS A FIRST-QUALITY SHOPPING MALL AND THAT THE CONSTRUCTION,  
REHABILITATION AND RENOVATION REQUIRED BY THE OWNER  
PARTICIPATION AGREEMENT IS COMPLETE UPON THE  
RECORDATION OF PARCEL MAP 2003-163

WHEREAS, the Redevelopment Agency of the City of Huntington Beach entered into that certain Owner Participation Agreement with Huntington Center Associates, LLC, dated October 2, 2000, which agreement was supplemented by that certain First Implementation Agreement dated August 4, 2005 (collectively, the "OPA"); and

In August 2005, the Redevelopment Agency approved the assignment of the OPA to Bella Terra Associates, LLC (the "Participant"); and

The OPA requires the construction, development, operation and management of a first-quality regional shopping center pursuant to plans approved by the City and meeting the design and architectural standards of that certain Specific Plan referred to as "The Crossings" on property formally referred to as Huntington Center, now referred to as Bella Terra, and located at the northwest corner of Beach Boulevard and Edinger Avenue; and

The OPA provides that, after completion of the construction of all improvements, as reasonably determined by the Agency, the Agency shall furnish the Participant with a Release of Construction Covenants upon written request. The Release of Construction Covenants is a conclusive determination of satisfactory completion of the construction, rehabilitation and renovation of the improvements required by the Scope of Development and Sections 401 and 501 (a) and (b) of the OPA;

The Agency received a written request for the Release of Construction Covenants dated December 11, 2006.

NOW, THEREFORE, the Redevelopment Agency of the City of Huntington Beach finds and determines as follows:

1. Bella Terra is a first-quality regional shopping center as required by the OPA and plans approved by the City and Agency.
2. The construction, rehabilitation and renovation required by the Scope of Development and Sections 401 and 501 (a) and (b) of the OPA and the plans approved by the City and Agency will be complete only upon the recordation of Parcel Map 2003-163.

3. If, and only if, Parcel Map 2003-163 is recorded, the Executive Director is hereby authorized to provide Participant with a Release of Construction Covenants for recordation with the Orange County Recorder.

PASSED AND ADOPTED by the Redevelopment Agency of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Agency Clerk

APPROVED AS TO FORM:

*Jennifer M. Smith*  
12/11/06 Agency Attorney 12/11/06

REVIEWED AND APPROVED:

*Penelope Cultrera*  
Executive Director

INITIATED AND APPROVED:

*Stanley Smith*  
Deputy Executive Director

E16 . 32

**ATTACHMENT #4**

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BELLA TERRA ASSOCIATES, LLC

December 11, 2006

Redevelopment Agency of the City of Huntington Beach  
City Hall  
2000 Main Street  
Huntington Beach, California, 92648  
Attention: Stanley Smalewitz, Economic Development Director  
VIA FACSIMILE: 714-375-5087 and Federal Express

Re: Owner Participation Agreement – Bella Terra Shopping Center

Dear Mr. Smalewitz:

We hereby request a Release of Construction Covenant as set forth in Section 413 of the above referenced Owner Participation Agreement.

Thank you.

Sincerely,

Bella Terra Associates, LLC

By: 

Eric Sahn, Vice President

cc. Leonie Mulvihill

C/O DJM CAPITAL PARTNERS  
60 SOUTH MARKET STREET – SUITE 1120  
SAN JOSE, CA 95113  
PHONE: 408-271-0366 • FAX: 408-271-0377

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Recording Requested By and  
When Recorded Mail to:

Huntington Center Associates, LLC  
c/o The Ezralow Company LLC  
23622 Calabasas Road, Suite 100  
Calabasas, California 91302  
Attention: Ms. Cristina Agra-Hughes

---

SPACE ABOVE THIS LINE FOR RECORDING USE

**RELEASE OF CONSTRUCTION COVENANTS**

**WHEREAS**, HUNTINGTON CENTER ASSOCIATES, LLC, a Delaware limited liability company ("HCA") was previously the owner of certain real property situated in the City of Huntington Beach, California described in Exhibit "A" which is attached hereto and made a part hereof (the "Property"), and agreed to rehabilitate, renovate and construct certain improvements thereon (the "Improvements"); and

**WHEREAS**, HCA sold the Property to Bella Terra Associates, LLC ("BTA") on or about August 16, 2005 (HCA and BTA being hereinafter referred to collectively as the "Participants"); and

**WHEREAS**, pursuant to the Owner Participation Agreement, dated October 4, 2000 entered into by and between the Redevelopment Agency of the City of Huntington Beach (the "Agency") and HCA, as supplemented by that certain First Implementation Agreement entered into between the Agency and HCA, dated August 4, 2005 and as assigned by HCA to BTA pursuant to that certain Assignment and Assumption Agreement, dated August 8, 2005 by and among Agency and Participants (collectively, the "OPA"), the Agency has agreed to furnish Participants with a Release of Construction Covenants ("Release") upon the completion of the redevelopment of the Improvements pursuant to the OPA, and such Release is to be in such form as to permit it to be recorded in the Recorder's Office of Orange County; and

**WHEREAS**, the OPA states that the Release shall be conclusive determination of satisfactory completion of the rehabilitation, renovation and construction of the Improvements as required by the Scope of Development (Attachment No. 4 of OPA) and Sections 401 and 501(a) and (b) of the OPA; and

**WHEREAS**, the Agency has determined that the rehabilitation, renovation and construction of the Improvements, as described in the Scope of Development and Sections 401 and 501(a) and (b) of the OPA, has been satisfactorily completed in accordance with the requirements of the Scope of Development and Sections 401 and 501(a) and (b) of the OPA; and

**NOW THEREFORE**, it is hereby acknowledged and agreed by the parties hereto that:

1. The Agency does hereby certify that the rehabilitation, renovation and construction of the Improvements on the Property has been fully and satisfactorily performed

and completed as required by the Scope of Development and Sections 401 and 501(a) and (b) of the OPA, and that Participants have fully complied with the terms of the Scope of Development and Sections 401 and 501(a) and (b) of the OPA with respect to such redevelopment of the Property.

2. All covenants set forth in the OPA and the Agreement Containing Covenants (Attachment No. 5 of OPA) remain in effect in accordance with the terms thereof.

**IN WITNESS WHEREOF**, the Agency has executed this Release this \_\_\_\_\_ day of December, 2006.

**REDEVELOPMENT AGENCY OF THE  
CITY OF HUNTINGTON BEACH**

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ personally  
appeared \_\_\_\_\_ ( ) personally known to me ( ) proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

My commission expires:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ personally  
appeared \_\_\_\_\_ ( ) personally known to me ( ) proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

My commission expires:

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## EXHIBIT "A"

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DESCRIBED AS FOLLOWS:

PARCELS 2 THROUGH 9, INCLUSIVE, OF PARCEL MAP NO. 86-200, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 255 PAGES 40 THROUGH 45, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THOSE PORTIONS OF SAID PARCELS 4 AND 8 CONVEYED TO THE CITY OF HUNTINGTON BEACH, A MUNICIPAL CORPORATION, BY DEED RECORDED MAY 1, 1991 AS INSTRUMENT NO. 91-209426 OF OFFICIAL RECORDS.

ALSO EXCEPT THOSE PORTIONS OF PARCELS 2 AND 6 CONVEYED TO THE CITY OF HUNTINGTON BEACH, A CALIFORNIA CHARTER CITY, BY DEED RECORDED MAY 31, 2005 AS INSTRUMENT NO. 05-414924, OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED FROM THE SURFACE OF SAID LAND.

ALSO EXCEPT FROM PARCELS 4, 5, 6, 7, 8 AND A PORTION OF PARCEL 2 AN UNDIVIDED 55% INTEREST IN ALL THE LAND LYING MORE THAN FIVE HUNDRED (500) FEET BELOW THE SURFACE, BUT NONE OF THE LAND LYING ABOVE A DEPTH OF FIVE HUNDRED (500) FEET BELOW THE SURFACE OF THE LANDS WITH NO RIGHT OF SURFACE ACCESS OR USE OF THE LANDS LYING MORE THAN FIVE HUNDRED (500) FEET BELOW THE SURFACE, HEREINAFTER REFERRED TO AS "SAID LAND", FOR THE PURPOSES OF EXPLORING AND PROSPECTING FOR (BY GEOLOGICAL, GEOPHYSICAL, AND ALL OTHER MEANS WHETHER NOW KNOWN OR NOT), DRILLING FOR, PRODUCING, SAVINGS, TAKING AND OWNING OIL, GAS, ASPHALTUM, AND ALL OTHER MINERALS, WHETHER SIMILAR OR DISSIMILAR TO THOSE HEREIN SPECIFIED AND INCLUDING FISSIONABLE MATERIALS COLLECTIVELY HEREINAFTER REFERRED TO AS "SAID SUBSTANCES," IN, UNDER OR THAT MAY BE PRODUCED FROM SAID LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS USEFUL OR CONVENIENT FOR OPERATIONS IN SAID LAND, IN ADJACENT OR CONTIGUOUS LANDS, AND IN OTHER LANDS IN THE SAME VICINITY, INCLUDING, BUT NOT LIMITED TO, (1) SUBSURFACE RIGHTS OF WAY FOR DRILLING, REPAIRING, RE-DRILLING, DEEPENING, MAINTAINING, OPERATING, ABANDONING, REWORKING AND REMOVING WELLS TO, IN, INTO AND THROUGH SAID LAND; (2) THE RIGHT TO CONDUCT OPERATIONS BY METHODS NOW KNOWN OR UNKNOWN WHICH ARE REASONABLY DESIGNED TO BENEFIT OR FACILITATE THE DRILLING FOR, OR PRODUCTION OF,

SAID SUBSTANCES FROM SAID LAND; (3) THE UNRESTRICTED AND EXCLUSIVE RIGHT, POWER AND AUTHORITY TO PRODUCE SAID SUBSTANCES BENEATH OR RECOVERABLE FROM SAID LAND, AND TO EXERCISE ALL OTHER RIGHTS AND PRIVILEGES HEREIN SET FORTH BY MEANS OF ANY WELL OR WELLS WHICH ARE SLANT DRILLED FROM SURFACE DRILL SITES LOCATED ON SUCH OTHER LANDS AND THE PRODUCING INTERVALS OF WHICH ARE BOTTOMED IN SAID LAND; AND (4) THE RIGHT TO DRILL A WELL OR WELLS OR USE ANY EXISTING WELLS, TO, IN, INTO OR THROUGH SAID PORTION OF SAID LAND, FOR THE PURPOSE OF INJECTING INTO SAID PORTION OF SAID LAND, OR INTO OTHER LANDS, OIL, GAS, AIR, WATER OR OTHER LIQUID OR GASEOUS SUBSTANCES, INCLUDING THE RIGHT, FROM TIME TO TIME TO IGNITE OR OTHERWISE ACTIVATE ANY OR ALL OF SUCH SUBSTANCES SO INJECTED OR ANY OR ALL OF SAID MINERALS AND MATERIALS DESCRIBED HEREIN WITHIN SAID PORTION OF SAID LAND OR OTHER LANDS, RESERVED IN DEED RECORDED APRIL 4, 1986 AS INSTRUMENT NO. 86-136183 OF OFFICIAL RECORDS AND RE-RECORDED AUGUST 13, 1986 AS INSTRUMENT NO. 86-360236 OF OFFICIAL RECORDS.